

November 26, 2012

**BY ELECTRONIC DELIVERY**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

**Re: Applications Filed for the Transfer of Control of Wavecom Solutions Corporation to Hawaiian Telcom, Inc., WC Docket No. 12-206**

Dear Ms. Dortch:

On September 14, 2012, the Department of Commerce and Consumer Affairs (“DCCA”), Division of Consumer Advocacy filed comments supporting but expressing concerns with regard to the applications of Wavecom Solutions Corporation (“Wavecom”) and Hawaiian Telcom, Inc. (“HTI”) for the transfer of control of Wavecom to HTI.<sup>1</sup> DCCA also filed a Statement of Position to this effect with the Hawaii Public Utilities Commission (“HPUC”) on September 20, 2012.<sup>2</sup>

DCCA raised concern in its comments that the disposition of Wavecom’s fixed assets, particularly its undersea fiber network, could contribute to a bottleneck in the availability of wholesale capacity to support competitive retail telecommunications services.<sup>3</sup> DCCA therefore recommended that HTI be required to make capacity on Wavecom’s telecommunications facilities available to its competitors.<sup>4</sup>

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<sup>1</sup> Comments of The State of Hawaii, Applications Filed for the Transfer of Control of Wavecom Solutions Corporation to Hawaiian Telcom, Inc., WC Docket No. 12-206 (Sep. 14, 2012) (“*DCCA Comments*”).

<sup>2</sup> See Division of Consumer Advocacy’s Statement of Position, Application of Hawaiian Telcom, Inc. and Wavecom Solutions Corporation For an Exemption or Waiver from All Regulatory Requirements or, in the Alternative, Approval of the Share Purchase Transaction and Related Transactions, Docket No. 2012-0174 (Sep. 20, 2012).

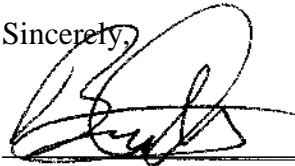
<sup>3</sup> *DCCA Comments* at 2-4.

<sup>4</sup> *Id.* at 5-6.

Following negotiations on this issue, the Consumer Advocate has entered into a Stipulation of Settlement (“Stipulation”) with HTI memorializing the proposed resolution of the State’s concerns regarding Wavecom fixed assets.<sup>5</sup> The Stipulation was filed with the HPUC on November 9, 2012 and a copy of the Stipulation is attached to this letter.

DCCA believes that the terms of the stipulation reasonably address the concerns raised in the State’s comments in this docket. DCCA notes, however, that the Stipulation remains to be adopted by the HPUC and the parties must implement its requirements. DCCA therefore is not withdrawing the comments that it filed with the Commission, believing instead that the issues raised in its comments should remain reflected in the record of this proceeding. DCCA provides this letter to indicate that, assuming that the Stipulation is adopted by the HPUC and implemented as described, DCCA considers the concerns that it raised regarding the transaction between HTI and Wavecom to be adequately addressed.

Sincerely,



Bruce A. Olcott

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(202) 626-6615

cc: Gregory J. Vogt, counsel for HTI  
Nancy J. Victory, counsel for Wavecom

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<sup>5</sup> Application of Hawaiian Telecom Inc. and Wavecom Solutions Corporation For an Exemption or Waiver from All Regulatory Requirements or, in the Alternative, Approval of the Share Purchase Transaction and Related Transactions, Docket No. 2012-0174, Stipulation of Settlement and Certificate of Service (Nov. 9, 2012).

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of	)	
	)	
HAWAIIAN TELCOM, INC. AND	)	Docket No. 2012-0174
WAVECOM SOLUTIONS CORPORATION	)	
	)	
For an Exemption or Waiver from All	)	
Regulatory Requirements or, in the	)	
Alternative, Approval of the Share Purchase	)	
Transaction and Related Transactions.	)	
	)	

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**HAWAIIAN TELCOM, INC., WAVECOM SOLUTIONS CORPORATION, AND THE  
DIVISION OF CONSUMER ADVOCACY'S STIPULATION OF SETTLEMENT**

**AND**

**CERTIFICATE OF SERVICE**

**FILED**  
**2012 NOV -9 P 3:05**  
**PUBLIC UTILITIES**  
**COMMISSION**

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BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of	)	
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HAWAIIAN TELCOM, INC. AND	)	Docket No. 2012-0174
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**HAWAIIAN TELCOM, INC., WAVECOM SOLUTIONS CORPORATION, AND THE  
DIVISION OF CONSUMER ADVOCACY'S STIPULATION OF SETTLEMENT**

WHEREAS, HAWAIIAN TELCOM, INC. ("HTI"), WAVECOM SOLUTIONS CORPORATION ("Wavecom") (HTI and Wavecom shall sometimes collectively be referred to as the "Applicants") and the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS (the "Consumer Advocate") are the only parties in the subject docket (HTI, Wavecom, and the Consumer Advocate are hereinafter together referred to as the "Parties");

WHEREAS, the Consumer Advocate filed its Statement of Position on September 20, 2012 ("SOP");

WHEREAS, while the Consumer Advocate did not object to the requested relief described in the Application filed by the Applicants (the "Transaction"), the Consumer Advocate recommended that a number of requirements be imposed upon HTI by the Commission as a condition to approval of the Transaction;

WHEREAS, while Applicants were agreeable to nearly all of the requirements proposed by the Consumer Advocate, the only requirement that HTI could not agree to was the proposed condition that Wavecom and all of its assets be subject to the regulatory requirements of Section 251(c) of the Communications Act if HTI utilizes any portion of those assets to support its retail telecommunications service offerings (the "Section 251(c) Obligations");

WHEREAS, on September 24, 2012, Applicants jointly filed their Response/Rebuttal Statement and explained their sole disagreement with the Consumer Advocate's proposed Section 251(c) Obligations and proposed certain alternatives which they believe would address the Consumer Advocate's concerns;

*WHEREAS, following additional discussions between HTI and the Consumer Advocate, the Parties have, for the purposes of the proceeding in the subject docket, reached a stipulated agreement on the Section 251(c) Obligations;*

WHEREAS, the Parties desire and have entered into this Stipulation of Settlement ("Stipulation") to formally memorialize their proposed resolution of the remaining issue concerning the Section 251(c) Obligations;

WHEREAS, during recent discussions between representatives of HTI and the Consumer Advocate (which also included discussions between the respective FCC counsel for HTI and the Consumer Advocate), HTI and the Consumer Advocate engaged in further dialogue to more fully understand respective positions and concerns including:

- 1) the Consumer Advocate's concern relating to the possible restriction of access or "warehousing" by HTI of the acquired Wavecom assets

during the "interim" period following the closing of the Transaction until the Wavecom assets and business operations are integrated either into HTI or Hawaiian Telcom Services Company, Inc. ("HTSC") (HTI and HTSC shall sometimes be referred to as the "HT Entities"), thereby limiting access by potential wholesale customers to utilize the Wavecom assets during such interim period;

- 2) the Consumer Advocate's related concern that without access to such facilities, competition for services that might utilize the interisland (undersea) and land based transport facilities during such interim period may be impeded;
- 3) HTI's need to conduct a thorough review of operations to determine whether and how each of Wavecom's assets and services would be either eliminated or consolidated with the HT Entities' existing operations; and
- 4) HTI's commitment to transition the various Wavecom assets to the HT Entities as soon as practicable after completing its review of operations as mentioned in (3) above.

WHEREAS, the Parties understand and acknowledge that the Commission is not bound by this Stipulation between the Parties, and that this Stipulation is subject to the review and approval of the Commission.

NOW, THEREFORE, the Parties, by and through their respective attorneys, do hereby enter into this Stipulation as mutually acceptable to each.

**I. TERMS OF STIPULATION.**

As fully discussed, understood and agreed upon by the Parties, HTI stipulates to commit to the following:

- A) Until the interisland and land-based transport facilities are legally and physically transferred, if HTI uses such Wavecom facilities to provide HTI's retail services, HTI commits to leasing capacity from these Wavecom assets if any wholesale customer requests capacity that HTI cannot provision using its current interisland and land-based transport network due to any of the following circumstances:
  - (1) the relevant portions of HTI's current interisland and land-based transport network have reached their capacity;
  - (2) the routing or technology of Wavecom's interisland and land-based transport network are "necessary" as defined by Section 251 (c) of the Communications Act for the wholesale customer to provide service; or
  - (3) HTI's current interisland and land-based transport network does not extend to the same locations as the Wavecom interisland and land-based transport facilities.
- (B) Upon receipt of a bona fide request from a telecommunications carrier:
  - (1) HTI will lease sufficient capacity required to provision the service for the requesting telecommunications carrier; and
  - (2) Provide that service to the requesting wholesale customer at the same rates and terms set forth in HTI's wholesale tariff.

- (C) Within thirteen (13) and twenty-six (26) months following Commission approval of the Transaction, HTI will file reports:
- (1) Summarizing and detailing the valuations of any former Wavecom assets which were transferred to HTI and HTSC and the valuations assigned to each of the assets; and
  - (2) Identifying any Wavecom assets and provide estimated timelines for any outstanding assets intended to be divested.

## **II. GLOBAL SETTLEMENT OF ALL ISSUES.**

Each provision of this Stipulation is in consideration and support of all other provisions, and is expressly conditioned upon acceptance by the Commission of the matters expressed in this Stipulation in their entirety. In the event the Commission declines to adopt parts or all of the matters agreed to by the Parties and as set forth in this Stipulation, the Parties reserve the right to pursue any and all of their respective positions through further negotiations and/or additional filings and proceedings before the Commission.

## **III. RECORD.**

The Parties agree that all filed documents in this proceeding, including the Consumer Advocate's SOP, Applicants' Response/Rebuttal Statement, the Consumer Advocate's Information Requests, Applicant's Responses to the Consumer Advocate's Information Requests (including any attachments and exhibits), and this Stipulation are part of the record in the subject docket, and that the Commission may take such steps and actions it deems necessary and appropriate to facilitate its review of this Stipulation, and to

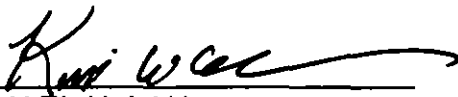


determine whether this Stipulation and the corresponding Application and Transaction should be approved.

#### IV. GENERAL.

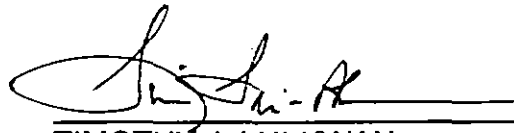
This Stipulation may be executed by the Parties in counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument. The Parties may execute this Stipulation by facsimile for initial submission to the Commission to be followed by the filing of originals of said facsimile pages.

DATED: Honolulu, Hawaii, November 9, 2012.



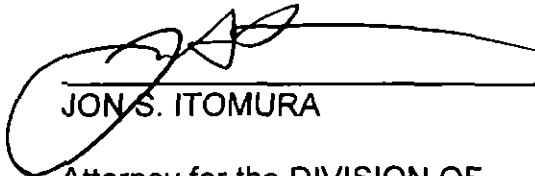
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CORPORATION



JON S. ITOMURA

Attorney for the DIVISION OF  
CONSUMER ADVOCACY

CERTIFICATE OF SERVICE

I (we) hereby certify that copies of the foregoing document were duly served on the following party, by having said copies delivered as set forth below:

DEPARTMENT OF COMMERCE AND CONSUMER  
AFFAIRS  
DIVISION OF CONSUMER ADVOCACY  
335 Merchant Street  
Room 326  
Honolulu, Hawaii 96813

2 COPIES  
HAND DELIVER

DATED: Honolulu, Hawaii, November 9, 2012.



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